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8 Attorneys for Defendants
9 CITY OF SAN BUENAVENTURA (erroneously
10 sued herein as separate defendants “The City of
San Buenaventura” and “The San Buenaventura
Police Department”), and OFFICER ERIC JACKSON
11

12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14

15 GABRIEL AMARO, an individual, }
16 Plaintiff, }
17 v. }

18 THE CITY OF SAN
19 BUENAVENTURA, THE SAN
20 BUENAVENTURA POLICE
21 DEPARTMENT, OFFICER ERIC
JACKSON, and DOES 1 – 10,
22 Inclusive, }

23 Defendants. }

Case No.: CV12-06735-VBK
**ANSWER TO FIRST AMENDED
COMPLAINT FOR DAMAGES**

25 Defendants City of San Buenaventura and Officer Eric Jackson answer the First
26 Amended Complaint of plaintiff Gabriel Amaro as follows:

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28 ///

RESPONSE TO ALLEGATIONS

1. Answering paragraphs 1, 2, 3 and 4 of the First Amended Complaint, these answering defendants admit that the plaintiff is making the contentions alleged therein.

2. Answering paragraph 5 of the First Amended Complaint, these answering defendants admit the allegations made therein.

3. Answering paragraphs 6 and 7 of the First Amended Complaint, these answering defendants deny the allegations therein, as the City of Ventura Police Department is not a separate and distinct public entity from the City of San Buenaventura and can therefore not be sued in its own capacity.

4. Answering paragraph 8 of the First Amended Complaint, these answering defendants admit that the plaintiff is making the contentions alleged therein.

5. Answering paragraph 9 of the First Amended Complaint, these answering defendants admit the allegations made in the first sentence; with respect to the second sentence of said paragraph, these answering defendants admit that the plaintiff is making the contentions alleged therein.

6. Answering paragraph 10 of the First Amended Complaint, these answering defendants admit that the plaintiff is making the contentions alleged therein.

7. Answering paragraph 11 of the First Amended Complaint, these answering defendants deny the allegations made therein.

8. Answering paragraphs 12 and 13 of the First Amended Complaint, these answering defendants have insufficient facts to admit or deny the allegations made therein.

9. Answering paragraphs 14 and 15 of the First Amended Complaint, these answering defendants deny the allegations made therein.

10. Answering paragraph 16 of the First Amended Complaint, these answering defendants have insufficient facts to admit or deny the allegations made therein.

1 11. Answering paragraphs 17-21 of the First Amended Complaint, these
2 answering defendants deny the allegations made therein.

3 12. Answering paragraph 22 of the First Amended Complaint, these answering
4 defendants deny the allegations made therein, except that they admit that medical
5 assistance was summoned for the plaintiff.

6 13. Answering paragraphs 23-26 of the First Amended Complaint, these
7 answering defendants deny the allegations made therein.

8 14. Answering paragraphs 27 and 28 of the First Amended Complaint, these
9 answering defendants admit that the plaintiff is making the contentions alleged therein.

10 15. Answering paragraphs 29-31 of the First Amended Complaint, these
11 answering defendants deny the allegations made therein.

12 16. Answering paragraphs 32-34 of the First Amended Complaint, these
13 answering defendants admit that the plaintiff is making the contentions alleged therein.

14 17. Answering paragraphs 35-36 of the First Amended Complaint, these
15 answering defendants deny the allegations made therein.

16 18. Answering paragraph 37 of the First Amended Complaint, these answering
17 defendants admit that the plaintiff is making the contentions alleged therein.

18 19. Answering paragraphs 38-40 of the First Amended Complaint, these
19 answering defendants deny the allegations made therein.

20 Prayer. These answering defendants deny the allegations made therein.

21 **AFFIRMATIVE DEFENSES**

22 1. At all times herein mentioned, plaintiff knew of the risks involved in his
23 actions and conduct, and with full knowledge of such risks and appreciating the dangers
24 thereof, nevertheless voluntarily assumed such risks; that by reason of the premises,
25 plaintiff is barred from recovery herein.

26 2. The incident mentioned in plaintiff's First Amended Complaint and the
27 resultant damages and/or injuries, if any, sustained by plaintiff, were directly and
28 proximately caused and contributed to by the negligence, carelessness, and/or

1 recklessness of the plaintiff in that at about the time and place set forth in plaintiff's
2 First Amended Complaint, the plaintiff failed to use due care and caution and
3 circumspection for his own safety and the damages, if any, recoverable by said plaintiff
4 shall be and will be diminished in proportion to the amount of fault attributable to said
5 plaintiff.

6 3. These answering defendants allege that any injury or damage, or loss, if
7 any, complained of by the plaintiff herein was not only proximately caused and
8 contributed to, but was solely, directly and proximately caused by negligence on the
9 part of plaintiff in that plaintiff did not exercise ordinary care on his own behalf at the
10 time and place as set forth in the First Amended Complaint on file herein.

11 4. The injuries and damages alleged by plaintiff, if any, were proximately
12 caused by the negligence and liability of other parties, and defendants request that an
13 allocation of such negligence and liability be made among such other parties, and that if
14 any liability is found on the part of defendants, that judgment against defendants be
15 only in the amount which is proportionate to the extent and percentage by which
16 defendants' acts or omissions contributed to plaintiff's injuries or damages.

17 5. Plaintiff has failed to mitigate his damages and/or injuries.

18 6. The First Amended Complaint, and each of its claims, fails to state facts
19 sufficient to constitute a claim.

20 7. The First Amended Complaint is barred by the qualified immunity
21 doctrine.

22 8. At all times herein mentioned, any injury to plaintiff arose out of the
23 course of employment, for which plaintiff has, or is entitled to receive, workers'
24 compensation benefits; plaintiff's employer and its employees, including plaintiff, were
25 acting within the scope of their said employment, and were themselves negligent in that
26 they failed to exercise ordinary care under the circumstances, failed to provide plaintiff
27 with a safe place of employment, failed to comply with certain other safety
28 requirements, and otherwise acted in willful and wanton disregard for the safety of

1 plaintiff and others; that said wrongful conduct proximately caused any injuries and
2 damages to plaintiff; by reason of the premises, any recovery by plaintiff must be
3 reduced by the amount of workers' compensation benefits paid to or to be paid.

4 **DEMAND FOR JURY TRIAL**

5 Defendants City of San Buenaventura and Officer Eric Jackson hereby demand a
6 jury trial.

7 **PRAYER**

8 Wherefore, defendants City of San Buenaventura and Officer Eric Jackson pray:

- 9 1. That the First Amended Complaint be dismissed and that plaintiff take
10 nothing;
11 2. For attorneys fees and costs; and
12 3. For such other and further relief as the Court deems just and proper.

14 Dated: October 27, 2012

15 OFFICE OF THE CITY ATTORNEY
16 CITY OF SAN BUENAVENTURA

17 By: 

18 Andy H. Viets
19 Senior Assistant City Attorney
20 Attorneys for Defendants
21 CITY OF SAN BUENAVENTURA
22 and OFFICER ERIC JACKSON